

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS (BOSTON)**

IN RE:

David Murphy

Wells Fargo Bank, National Association, not in its individual or banking capacity, but solely as trustee for SRMOF 2009-1 Trust,

VS.

David Murphy

CHAPTER 13  
CASE NO. 15-12499-MSH

**MOTION FOR RELIEF FROM STAY**

To the Honorable Melvin S. Hoffman:

Wells Fargo Bank, National Association, not in its individual or banking capacity, but solely as trustee for SRMOF 2009-1 Trust, your moving party in the within Motion, hereby requests that the Court grant relief from the Automatic Stay imposed by 11 U.S.C. 362 and any applicable Co-debtor Stay imposed by 11 U.S.C. §1301 and respectfully represents:

1. The movant has a mailing address of, c/o Selene Finance, LP, 9990 Richmond Avenue, Suite 400, Houston, TX 77049.
2. The debtor, David Murphy, has a mailing address of 60 Fuller Avenue, Swampscott, MA 01907.
3. On June 24, 2015, the debtor filed a petition under Chapter 13 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Massachusetts.
4. The debtor's Chapter 13 plan has not been confirmed.
5. The movant is the holder of a first mortgage on real estate in the original amount of

\$270,000.00 given by David P. Murphy to PNC Mortgage Corp. of America on or about May 29, 1998. Said mortgage is recorded with the Essex County (Southern District) Registry of Deeds (the "Registry") at Book 14845, Page 307 and covers the premises located at 60 Fuller Avenue, Swampscott, MA 01907, as affected by a loan modification agreement dated on or about September 4, 2009 and recorded with the Registry at Book 29923, Page 107.

6. Said mortgage secures a note given by David P. Murphy to PNC Mortgage Corp. of America in the original amount of \$270,000.00.

7. There is no other collateral securing the obligation.

8. Said mortgage was assigned by PNC Mortgage Corp. of America to U.S. Bank, National Association as custodian/trustee and said assignment is recorded with the Registry at Book 15384, Page 413. The mortgage was further assigned by U.S. Bank, National Association as custodian/trustee to Credit Based Asset Servicing and Securitization LLC and said assignment is recorded with the Registry at Book 25270, Page 266. The mortgage was assigned by Credit Based Asset Servicing and Securitization LLC to Selene Finance, LP and said assignment is recorded with the Registry at Book 31974, Page 586. The mortgage was further assigned by Selene Finance, LP to Wells Fargo Bank, National Association, not in its individual or banking capacity, but solely as trustee for SRMOF 2009-1 Trust and said assignment is recorded with the Registry at Book 31974, Page 600. A copy of the mortgage, loan modification agreement, note, and assignments are annexed hereto and marked as **Exhibit A**.

9. There is a Declaration of Homestead recorded with the Registry at Book 27973, Page 113.

10. As of March 14, 2016, approximately \$460,574.19 in principal, interest, late fees and other charges was due with regard to Wells Fargo Bank, National Association, not in its individual or banking capacity, but solely as trustee for SRMOF 2009-1 Trust's note and mortgage.

11. There are the following encumbrances on the property:

Name of Creditor	Type of Lien	Amount Owed
Movant	First Mortgage	\$460,574.19
Estate of Patricia Brennan	Second Mortgage	\$60,000.00
Monarch Enterprises	Third Mortgage	\$20,000.00
Town of Swampscott	Tax Lien	\$1,179.70
Capital One Bank (USA), N.A.	Execution Lien	\$1,154.05
Brotherhood Credit Union	Execution Lien	\$5,993.29
<b>Total Secured Encumbrances:</b>		<b>\$548,901.23</b>

12. The pre-petition arrearage is \$180,639.47.

13. According to the debtor's schedules, the fair market value of the subject property is \$468,000.00. The liquidation value of the subject property is \$437,285.92, calculated as the fair market value less a reasonable realtor's fee (6%); deed stamps (\$2,134.08) and anticipated costs incurred for a real estate closing of \$500.00.

14. The debtor has no equity in the property.

15. The debtor has failed to remain current with the post-petition payments to Wells Fargo Bank, National Association, not in its individual or banking capacity, but solely as trustee for SRMOF 2009-1 Trust.

16. The last post-petition payment received by the movant was a payment in the amount of \$2,000.00, received on or about March 2, 2016, and was applied to the October 1, 2015 post-petition payment.

17. The total post-petition arrearage due as of March 14, 2016 is \$12,058.96, excluding attorney's fees and costs. As a result of this motion, attorney's fees and costs of approximately \$1,026.00 have accrued. This figure may increase as additional attorney's fees and costs continue to accrue.

18. The total post-petition arrearage through the anticipated hearing on this motion would also include any additional monthly mortgage payments in the amount of \$2,895.44, which payments are due on the first of every month. The post-petition arrearage would also include any additional expenses, attorney's fees and costs that accrue from the date of the filing of this motion through the date of the hearing.

19. The property is not necessary for a successful reorganization of the debtor.

20. The movant seeks relief from stay as a secured creditor to enforce its rights under its loan documents and applicable law. In support thereof, the movant states that it is entitled to relief as follows:

I. Pursuant to 11 U.S.C. 362 (d)(1) for cause on the basis that the debtor has not made timely post petition payments, and that the debtor has failed to provide the plaintiff with adequate protection;

II. Pursuant to 11 U.S.C. 362 (d)(2) on the basis that the debtor has no equity in the subject property and the property is not necessary for effective reorganization.

WHEREFORE, the movant prays that it, and its successors and/or assigns, be granted relief from the stay for the purpose of: (i) exercising its rights under its agreements with the debtor and any co-debtors under applicable law, including, without limitation, taking possession of the mortgaged premises and/or foreclosing or accepting a deed in lieu of foreclosure of its mortgage on said premises; (ii) preserving its right to seek any deficiency to the extent permitted by state and federal law, including 11 U.S.C. §524(a); (iii) bringing such actions, including, without limitation, summary process proceedings, as are permissible by law; and (iv) that the Court order such other and further relief as may be just and proper.

Respectfully submitted,

Wells Fargo Bank, National Association, not in its  
individual or banking capacity, but solely as trustee for  
SRMOF 2009-1 Trust,  
By its attorney,

/s/ Jason J. Giguere

Jason J. Giguere, Esquire  
BBO# 667662  
Harmon Law Offices, P.C.  
P.O. Box 610389  
Newton, MA 02461-0345  
(617) 558-0500

Dated: April 8, 2016

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS (BOSTON)**

IN RE:

David Murphy

CHAPTER 13

CASE NO. 15-12499-MSH

**CERTIFICATE OF SERVICE**

I, Jason J. Giguere, Esquire, state that on April 8, 2016, I electronically filed the foregoing document with the United States Bankruptcy Court for the District of Massachusetts using the CM/ECF System. I served the foregoing document on the following CM/ECF participants:

Carolyn Bankowski, Esquire, Chapter 13 Trustee  
John Fitzgerald, Esquire, Assistant U.S. Trustee  
Herbert Weinberg, Esquire for the Debtor

I certify that I have mailed by first class mail, postage prepaid the documents electronically filed with the Court on the following non CM/ECF participants:

/s/ Jason J. Giguere  
Jason J. Giguere, Esquire  
BBO# 667662

David Murphy  
60 Fuller Avenue  
Swampscott, MA 01907

Monarch Enterprises, Inc.  
c/o Florello & Migliori  
18 Essex Street  
Haverhill, MA 01830

Capital One Bank (USA), N.A. f/k/a Capital One Bank  
4851 Cox Road  
Glen Allen, VA 23060

Brotherhood Credit Union  
75 Market Street  
Lynn, MA 01901

Town of Swampscott  
Office of the Tax Collector  
22 Monument Avenue  
Swampscott, MA 01907-1977

Estate of Patricia Brennan  
c/o Beach Supply  
252 Lee Burbank Highway  
Chelsea, MA 02150

Capital One Bank (USA), N.A. f/k/a Capital One Bank  
c/o Gary Howard Kreppel  
Law Office of Gary H. Kreppel, P.C.  
33 Boston Post Road West, Suite 590  
Marlborough , MA 01752

Brotherhood Credit Union  
c/o H Scott Haskell  
Haskell & Ayer, P.C.  
5 Market Square, Suite 107  
PO Box 507  
Amesbury, MA 01913

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS (BOSTON)

In re:

David Murphy,

Debtor

CHAPTER 13

CASE NO. 15-12499-MSH

**Order Granting Wells Fargo Bank, National Association, not in its individual or banking capacity, but solely as trustee for SRMOF 2009-1 Trust Relief From Stay And Leave To Foreclose Mortgage**

This matter has come before the Court, and after full consideration, and no objections having been filed after proper notice, it is hereby ordered that Wells Fargo Bank, National Association, not in its individual or banking capacity, but solely as trustee for SRMOF 2009-1 Trust, its Successors and/or Assigns, Motion for Relief From Stay is hereby granted and the stay imposed by 11 U.S.C. §362 and/or 11 U.S.C. §1301 is hereby terminated and it may proceed to foreclose or accept a deed in lieu of foreclosure of the mortgage given by David P. Murphy to PNC Mortgage Corp of America dated May 29, 1998 and is recorded with the Essex County (Southern District) Registry of Deeds at Book 14845, Page 307 as affected by a loan modification agreement dated on or about September 4, 2009 and recorded with said Registry at Book 29923, Page 107 and which covers the premises located at 60 Fuller Avenue, Swampscott, MA 01907, and may exercise its rights under said Mortgage, including preserving its right to seek any deficiency to the extent permitted by state and federal law, including 11 U.S.C. §524(a), and may bring such actions, including, without limitation, summary process proceedings, as are permissible by law, all as set forth in its Motion.

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Honorable Melvin S. Hoffman  
United States Bankruptcy Judge

201008-0508